

REMARKS

I. PENDING CLAIMS, AMENDMENTS, AND FINALITY OF OFFICE ACTION

Claims 1-37 are pending in this application. Claims 28-37 have been withdrawn by the Examiner as directed to a nonelected invention. Applicants have amended the claims and specification to comply with the Examiner's suggestions and to remove objections raised by the Examiner. These corrections and amendments do not raise new issues requiring further consideration and/or search, and should therefore be entered.

Applicants note that the Examiner has made this action final, though it is the first action on the merits in this application, asserting that each of the rejections could have been made final in the parent application. However, the Examiner in the parent application does not appear to have rejected claim 14 as obvious over Higgins et al., Vinod, and Hamilton et al. This rejection could not properly have been made final in the parent application because it was never made in the parent application. Accordingly, its finality is not proper in this application, and the Examiner is respectfully requested to withdraw finality of this Office action, since this is the first opportunity that Applicants have had to respond to this ground of rejection.

II. DRAWING OBJECTIONS

In paragraph 2 of the Office action, the Examiner has objected to the drawings as failing to show woven layer 12 in Fig. 1. Applicants submit herewith a proposed

drawing correction in which woven layer 12 is indicated on Fig. 1, and request approval of this proposed drawing correction and withdrawal of the objection.

In paragraph 3 of the Office action, the Examiner has objected to the drawings because the reinforcement web is indicated by reference numeral 20 in the drawings, but has been referred to using reference numeral 22 in the specification at page 16, line 10. Applicants have amended the specification at page 16 to use the correct reference numeral, and request withdrawal of this objection.

In paragraph 4 of the Office action, the Examiner objects to the drawings because the reference numerals 12 and 112 have been used in different drawings to refer to the woven fabric. Applicants submit herewith proposed drawing correction in which the reference numeral 112 in Fig. 4 has been changed to the reference numeral 12. Approval of this proposed drawing correction and withdrawal of the objection are requested.

In paragraph 5 of the Office action, the Examiner objects to the drawings because the reference numeral 12 has allegedly been used to designate both the woven fabric and the stabilizing layer, referring to the specification at page 27, line 5. Applicants submit that the specification indicates that the stabilizing layer is there to stabilize woven fabric 12, and have amended the specification to clarify this. As a result, the reference numeral 12 has only been used to refer to the woven fabric, and not to any stabilizing layer. Withdrawal of this objection is requested.

In paragraph 6 of the Office action, the Examiner has objected to the drawings because Fig. 4 uses the reference numeral 126 to refer to the roll of stabilizing layer,

while the specification at page 31 uses reference numeral 26. Applicants have amended the specification to use the same reference numeral as Fig. 4, and request that the objection be withdrawn.

In paragraph 7 of the Office action, the Examiner objects to the drawings because of the reference to Fig. 2 at page 31, line 20 of the specification. Applicants have amended the specification to refer to Fig. 4, as suggested by the Examiner, and request that the objection be withdrawn.

In paragraph 8 of the Office action, the Examiner objects to the drawings because of the use of reference numeral 126 in Fig. 4, and the use of reference numeral 115 in Fig. 3. Applicants have amended the specification to use reference numeral 126 therein with respect to Fig. 4, as explained above. Applicants have also amended the specification at page 31, lines 5-10, to use reference numeral 115 to refer to the secondary backing of Fig. 3. Accordingly, Applicants request that this objection be withdrawn.

III. OBJECTIONS TO SPECIFICATION

In paragraph 9 of the Office action, the Examiner has objected to the specification as containing an embedded hyperlink. Applicants have amended the specification to eliminate the hyperlink, and request that this objection be withdrawn.

In paragraph 10 of the Office action, the Examiner objects to the specification as failing to provide proper antecedent basis for the subject matter of claim 19. Applicants have amended claim 19 to recite that the resilient layer is between the

fabric top layer and the backing fabric, which is fully supported by the specification as filed.

IV. CLAIM OBJECTIONS

In paragraph 11 of the Office action, the Examiner has objected to claim 8, suggesting that Applicants use the spelled out name for PTT. While Applicants submit that one of ordinary skill in the art, reading the claims in light of the specification, would understand what PTT means, Applicants have amended the specification to comply with the Examiner's suggestion.

V. ANTICIPATION REJECTIONS

A. Vinod (U.S. Patent No. 5,965,232)

In paragraph 13 of the Office action, the Examiner has rejected claims 1, 3, and 4 as anticipated under 35 U.S.C. § 102(e) by Vinod. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The Examiner states that "the coating applied to the lower surface of the fabric [in Vinod] corresponds to the Applicants' backing layer." The Examiner goes on to state that "the lower surface is attached to a stabilizing layer . . . [t]he stabilizing fabric is a scrim or sheet comprising fibrous nonwoven material such as fiberglass, which has good tensile strength and moisture stability."

First, Applicants' claims recite a woven fabric top layer. Because this top layer is the top layer of a floor covering, it is also the wear layer. Vinod does not disclose a woven fabric top layer. Instead, Vinod discloses a decorative fabric, which may or may not be woven, that is protected from wear by a protective polymer

coating. The polymer coating forms the top layer, not the decorative fabric. For this reason alone, Vinod does not anticipate Applicants' claims. In effect, Vinod is directed to a type of vinyl flooring, not a woven carpet or carpet tile.

Second, Vinod discloses applying this protective polymeric coating to the top and bottom surfaces of the decorative fabric, and the Examiner specifically relies upon this disclosure, mapping the lower polymeric coating to the backing layer of the claims. The Examiner then maps the "stabilizing layer" of Vinod to the backing layer recited in Applicants' claims. This analysis does not comport with the reality of how carpet and carpet tile is made, and requires a distorted analysis of the terms of Applicants' claims.

To the extent that the lower polymeric coating described by Vinod corresponds to anything in Applicants' floor covering, it corresponds to the optional precoat layer recited in claims 9-15 (although it is by no means clear that the protective polymeric layer of Vinod fulfills all of the functions of a precoat, it is abundantly clear that the polymeric layer does not fulfill the functions of a backing layer, as described in Applicants' specification). If this is the case, then some other disclosed feature of Vinod must be mapped to the claimed backing. However, the intermediate stabilizing layer 3 of Vinod does work, as this corresponds to the optional stabilizing layer of claims 16-17. Cushioning layer 5 of Vinod cannot be mapped to the claimed backing layer; the Examiner has already mapped it to the recited backing fabric. The result of assigning the elements disclosed in Vinod to their common sense counterparts in a carpet or carpet tile is that there is no element

disclosed by Vinod that corresponds to the recited backing layer. It is only by distorting the meaning of terms and disregarding the function of the elements disclosed in Vinod that the Examiner can fit the square peg of the Vinod disclosure into the round hole of Applicants' claims.

Applicants submit that, under these circumstances and for at least these reasons, the Vinod disclosure does not anticipate Applicants' claims, and that this rejection should be withdrawn.

B. Cooney (U.S. Patent No. 3,823,056)

In paragraph 14 of the Office action, the Examiner has rejected claims 1, 2, 9-11, 16, and 19 under 35 U.S.C. § 102(b) as anticipated by Cooney. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The Examiner appears to have confused methods for making a pile carpet (which can be done by weaving the pile into a backing layer) with a woven top layer, where the actual cloth that is exposed to traffic and wear is a woven material. Cooney makes very clear that his antistatic floor covering is illustrated by his drawing figure, which clearly and unambiguously indicates that the wear surface of the floor covering is pile, not a woven fabric. It is this fibrous, pile layer that can be woven, tufted, knitted, flocked, or otherwise formed into the floor covering.

Because Cooney does not disclose a woven top layer (i.e., a top layer that is a woven cloth material), it does not anticipate Applicants' claims, and this rejection should be withdrawn.

VI. OBVIOUSNESS REJECTIONS

A. Terry et al. (WO 93/08325) in view of Hamilton et al. (U.S. 5,198,277)

In paragraph 16 of the Office action, the Examiner has rejected claims 1, 2, 9, 16, and 19-21 under 35 U.S.C. § 103(a) as obvious over Terry et al. in view of Hamilton et al. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The Examiner admits that Terry et al. disclose a tufted carpet. A tufted carpet has a top layer that is pile, not a woven top layer. This is true regardless of the structure of the primary backing layer, because the primary backing layer is not the top layer of the carpet. Similarly, Hamilton et al. disclose a tufted carpet tile. Again, the top layer is pile, not a woven fabric, irrespective of the structure of the backing layer. Thus, even if Terry et al. is combined with Hamilton et al., the result is not a floor covering having a woven top layer, as specifically recited by the claims. As a result, for at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness, and this rejection should be withdrawn.

B. Vinod

In paragraph 17 of the Office action, the Examiner has rejected claims 6 and 7 under 35 U.S.C. § 103(a) as obvious over Vinod. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The many defects of Vinod are described above in section V-A of these Remarks. The denier of the decorative fabric disclosed in Vinod have no effect on the fact that Vinod fails to disclose the layers recited in Applicants' claims. Moreover,

Vinod contains no suggestion (nor has the Examiner pointed to any) to modify the vinyl floor covering disclosed therein in such a way as to obtain the layers recited in Applicants' claims. Accordingly, since Vinod fails to provide a *prima facie* case of obviousness for even claim 1, it cannot do so for dependent claims 6 and 7. The Examiner's rejection should, for at least these reasons, be withdrawn.

C. Vinod in view of Howell et al. (U.S. Patent 5,645,782)

In paragraph 18 of the Office action, the Examiner has rejected claims 5 and 8 under 35 U.S.C. § 103(a) as obvious over Vinod in view of Howell et al. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The deficiencies of Vinod have been discussed at length above in sections V-A and VI-B of the Remarks. Howell et al. merely discloses how to manufacture continuous filaments of PTT. While the Examiner apparently relies on the Howell et al. disclosure to establish that PTT is known in the art to make carpet fibers, Howell et al. make very clear at column 1, lines 39-45 that the type of carpet for which these fibers are used is conventional, pile-surfaced, tufted carpet. This is evident from the references to crush resistance. Further evidence can be found at column 4, lines 22-25, wherein pile is specifically mentioned. Because Howell et al. is limited to pile-surfaced carpets, neither it nor Vinod teach a floor covering with a woven top surface. For at least this reason, the Examiner has failed to establish a *prima facie* case of obviousness, and this rejection should be withdrawn.

D. Higgins (WO 95/23691) in view of Vinod

In paragraph 19 of the Office action, the Examiner has rejected claims 1-4, 9-12, 15-19, and 22-25 under 35 U.S.C. § 103(a) as obvious over Higgins in view of Vinod. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The Examiner admits that Higgins et al. relates to a pile-surfaced carpet fabric. The Examiner nevertheless interprets Applicants' claim language "woven fabric top layer" to include the woven primary backing of the Higgins et al. carpet (while at the same time admitting that Higgins fails to teach using a woven fabric as the top layer). As Applicants have explained above, and as is clear from Applicants' specification, the claimed invention is one where the top layer of the floor covering, i.e., the layer exposed to wear, is a woven fabric. The top layer of the Higgins et al. carpet is not a woven fabric, but a tufted pile layer. Vinod does not teach or suggest that the carpet fabric of Higgins et al. should be modified to expose the primary backing as a top layer, so that even if the reference teachings are combined, the Examiner has still not established a *prima facie* case of obviousness, and this rejection should be withdrawn.

Moreover, as explained above, Vinod does not disclose a woven fabric top layer, but rather a vinyl flooring product containing a decorative fabric, which may be woven, below a polymeric coating, wherein the polymeric coating forms the top layer. Even if the references were combined in the manner suggested by the Examiner, the claimed invention would not be obtained.

In addition, the Examiner interprets Vinod in a way that is fundamentally inconsistent with the interpretation she uses in her anticipation rejection, addressed in section V-A above. In combining Vinod with Higgins et al., relying on the disclosure in Vinod of a protective coating applied to the back of the decorative fabric as corresponding to the precoat layer of Applicants' claims (and not suggested in Higgins et al.). However, in her anticipation rejection, the Examiner indicates that the back protective coating corresponds to the claimed backing layer. Applicants respectfully submit that the Examiner should choose one interpretation and apply it consistently to all of the claims, rather than pick and choose interpretations based on an impermissible hindsight reconstruction of Applicants' claimed invention.

E. Higgins et al., Vinod, and Hamilton et al.

In paragraph 20 of the Office action, the Examiner has rejected claim 14 under 35 U.S.C. § 103(a) as obvious over Higgins et al. and Vinod as applied to claim 9, and further in view of Hamilton et al. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

Applicants agree that combination of Higgins et al. with Hamilton et al. gives a tufted, pile carpet fabric having a latex precoat on the underside of the primary backing. Such structures are relatively common in the carpet industry. However, neither this combination of teachings, nor further combination with Vinod, teaches or suggests a floor covering material where the top surface is a woven fabric. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness, and this rejection should be withdrawn.

F. Higgins et al., Vinod, and Blakely et al. (WO 90/14107)

In paragraph 21 of the Office action, the Examiner has rejected claim 13 under 35 U.S.C. § 103(a) as obvious over Higgins et al. and Vinod as applied to claim 12, further in view of Blakely et al. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

Applicants agree that combination of Higgins et al. with Blakely et al. suggests inclusion of antimicrobials in the precoat layer of carpet and carpet tile. However, neither this combination of reference teachings, nor further combination with Vinod, teaches or suggests a floor covering material where the top surface is a woven fabric. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness, and this rejection should be withdrawn.

G. Higgins et al., Vinod, and Terry et al.

In paragraph 22 of the Office action, the Examiner has rejected claims 20, 21, 26, and 27 under 35 U.S.C. § 103(a) as obvious over Higgins et al., Vinod, and Terry et al. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

Contrary to the Examiner's assertions, Vinod does not disclose a woven fabric top layer, but rather a vinyl flooring product containing a decorative fabric, which may be woven, below a polymeric coating, wherein the polymeric coating forms the top layer. Irrespective of whether it might have been obvious to use the urethane modified bitumen backing of Terry et al. in the carpet fabric of Higgins et al., the combination of references suggested by the Examiner does not produce the claimed

invention. Vinod teaches a vinyl floor covering having a decorative fabric embedded therein (i.e., having a protective polymeric coating disposed on either side of the fabric).

Even if, for some unspecified reason, one of ordinary skill in the carpet tile art were to disregard the teachings of both Higgins et al. and Terry et al. and dispense with using a tufted pile top layer, and even if this worker were to replace this surface with that of Vinod, the result would be a vinyl covering having a polymeric layer top surface, not a woven fabric top surface as recited in Applicants' claims. For at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness, and this rejection should be withdrawn.

Serial No. 10/817,049
Amendment and Response
to Final Office Action

CONCLUSION

The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Order Account No. 11-0855.

Respectfully submitted,



Bruce D. Gray
Reg. No. 35, 799

KILPATRICK STOCKTON LLP
Suite 2800, 1100 Peachtree Street
Atlanta, Georgia 30309-4530
(404) 815-6218